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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR
AGENCY ACTION OF BILL BARRETT
CORPORATION FOR AN ORDER POOLING
ALL INTERESTS, INCLUDING THE
COMPULSORY POOLING OF THE INTERESTS
OF CERTAIN NON-CONSENTING OR
UNLOCATABLE OWNERS, IN TWO (2)
DRILLING UNITS ESTABLISHED FOR THE
PRODUCTION OF OIL, GAS AND
ASSOCIATED HYDROCARBONS FROM
THE LOWER GREEN RIVER-WASATCH
FORMATIONS, COMPRISED OF ALL OF
SECTIONS 8 AND 9, RESPECTIVELY,
TOWNSHIP 4 SOUTH, RANGE 6 WEST, USM,
DUCHESNE COUNTY, UTAH

**(PROPOSED) FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

Docket No. 2014-041

Cause No. 139-125

This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, December 10, 2014, at 11:35 a.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City. The following Board members were present and participated at the hearing: Chairman Ruland J. Gill, Jr., Susan S. Davis, Gordon L. Moon, Michael R. Brown, Kelly L. Payne, Carl F. Kendell and Chris D. Hansen. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Bill Barrett Corporation ("BBC") were Teale P. Stone - Landman, David M. Watts - Land Manager, and Brent A. Murphy - Drilling

Engineer Advisor. Mr. Watts and Mr. Murphy were recognized by the Board as experts in petroleum land management and petroleum engineering, respectively, for purposes of this Cause. Kurt P. Gasser, Esq. and Frederick M. MacDonald, Esq., of and for MacDonald & Miller Mineral Legal Services, PLLC, appeared as attorneys for BBC.

The Division of Oil, Gas and Mining (the "Division") did not file a staff memorandum in this Cause but participated in the hearing. John Robinson, Jr., Esq., Assistant Attorney General, appeared as attorney for the Division. After clarification of minor questions, Mr. Robinson expressed that the Division had no objection to the granting of BBC's Request for Agency Action dated October 20, 2014 (the "Request"), as conforming to the testimony and other evidence provided at the hearing.

No other party filed a response to BBC's Request and no other party appeared or participated at the hearing. As a consequence of their respective failures to timely file a response and appear at the hearing after proper notice to them, BBC made an oral motion at the commencement of the hearing to declare all of the Consenting and Non-Consenting FP Parties (as defined and named in the Request) in default pursuant to Utah Admin. Code Rules R641-104-150 and R641-108-400, which the Board granted.

BBC also advised the Board that, since the filing of the Request, it had obtained a lease from May Ann Smith Arrington, an additional party for whom compulsory pooling

had been sought. As a consequence, the need to compulsory pool Ms. Arrington's interest had become moot.

Upon motion by Mr. Gill, without objection and duly seconded and unanimously approved, the Board, deeming the Request to be uncontested and in the interest of time and brevity, requested and authorized Mr. MacDonald to proffer the testimony of BBC's witnesses in a summary fashion, which he did and which was confirmed by the witnesses under oath.

The Board, having considered the proffered testimony and exhibits admitted into evidence at the hearing, being fully advised, and for good cause, hereby makes the following findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. BBC is a Delaware corporation in good standing, with its principal place of business in Denver, Colorado. BBC is duly qualified to conduct business in the State of Utah, and is fully and appropriately bonded with all relevant State of Utah agencies.

2. Under the Order entered on September 27, 1978 in Cause No. 139-17 (the "139-17 Order"), as modified by the Orders entered on April 17, 1985 in Cause No. 139-42 (the "139-42 Order"), entered on June 18, 2007 in Cause No. 139-77 (the "139-77 Order"), entered on December 21, 2008 in Cause No. 139-84 (the "139-84 Order") and entered November 6, 2014 in Cause No. 139-124 (the 139-17, 139-42, 139-77, 139-84

and 139-124 Orders collectively hereinafter the "Applicable Orders"), the Board established the entirety of subject Sections 8 and 9 as drilling units for the production of oil, gas and associated hydrocarbons from the Lower Green River-Wasatch formations, defined in the Applicable Orders as:

The interval from the top of the Lower-Green River formation (TGR₃ marker) to the base of the Green River-Wasatch formations (top of the Cretaceous), which base is defined as the stratigraphic equivalent of the Dual Induction Log depths of 16,720 feet in the Shell-Ute 1-18B5 well located in the S½NE¼ of Section 18, Township 2 South, Range 5 West, U.S.M., and 16,970 feet in the Shell-Brotherson 1-11B4 well located in the S½NE¼ of Section 11, Township 2 South, Range 4 West, U.S.M.,

(individually the "Drilling Unit" and collectively the "Drilling Units"), and authorized up to eight producing wells for each such unit, whether all vertical, all horizontal, or a combination of both, to be located no closer than 660 feet from a unit boundary and 990 feet from another well producing in the same formation.

3. Subject Section 8 is a regular 640-acre section divided into three oil and gas tracts as follows:

<u>Tract</u>	<u>Lands</u>	<u>Acreage</u>	<u>% of Drilling Unit</u>
I	NE¼NE¼	40	6.25%
II	NW¼NE¼, N½NW¼	120	18.75%

III	S½N½, S½	480	75%
TOTAL =		640	100%

Tracts I and II are both owned in fee, while Tract III is Tribally owned.

4. In Tract I of Section 8, BBC and Crescent Point Energy U.S. Corporation ("Crescent Point") have 24.764866% of the oil and gas under lease. Also, in Tract I, QEP Energy Company ("QEP") owns 50% of the oil and gas, which is unleased but subject to a joint operating agreement ("JOA"). Another 10.666660% of Tract I is under lease to Rio Capital, Ltd. ("Rio Capital"), and 5% of Tract I is under lease to EP Energy E&P Company, L.P. ("EPE"). BBC also owns 0.001695% of the oil and gas in Tract I in fee which is unleased but subject to JOA's. Each fee lease grants to the respective lessee the unilateral right to pool the lessor's interest thereunder. In Tract I, the owners of a collective 4.673444% of the oil and gas have not granted leases, have signed Authority for Expenditures ("AFE's") and have paid or agreed to pay their respective share of costs of the Section 8 wells, but have not signed a JOA or otherwise voluntarily pooled their interests. The entirety of Tract II is owned in fee (privately), all subject to leases in favor of BBC and Crescent Point, and the entirety of Tract III is Tribally owned and subject to a Ute Tribal lease and/or an exploration and development agreement in favor of BBC and Crescent Point.

5. Section 9 is also a regular 640-acre section in which oil and gas ownership is divided into the following five tracts:

<u>Tract</u>	<u>Lands</u>	<u>Acreage</u>	<u>% of Drilling Unit</u>
I	N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	120	18.75%
II	SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	120	18.75%
III	SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE	120	18.75%
IV	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40	6.25%
V	S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	240	37.5%
TOTAL =		640	100%

Tracts I through IV are all owned in fee, while Tract V is Tribally owned.

6. In Tract I of Section 9, owners of a collective 68.887720% of the oil and gas have granted leases to BBC and Crescent Point, and an additional 29.631580% of the oil and gas is under lease to EPE. In Tract II, 16.428540% of the oil and gas is under lease to BBC and Crescent Point, and 82.142900% of the oil and gas is under lease to EPE. In Tract III, 49.788490% of the oil and gas is under lease to BBC and Crescent Point, while an additional 50.211510% of the oil and gas is under lease to EPE. In Tract IV, QEP owns 50% of the oil and gas, and BBC owns 0.001695% and Deril Enloe Smith owns 0.006774%, all of which remain unleased but subject to JOA's. In Tract IV, 10.666660% of the oil and gas is under lease to Rio Capital, 29.762886% of the oil and

gas is under lease to BBC and Crescent Point. Each fee lease grants to the respective lessee the unilateral right to pool the lessor's interest thereunder. In Tract IV, the owners of a collective 4.673444% of the oil and gas have not granted leases, but have signed AFE's and have paid or agreed to pay their respective share of costs of the Section 9 well, but have not signed a JOA or otherwise voluntarily pooled their interests. The entirety of Tract V is under a Ute Tribal lease and/or an exploration and development agreement to BBC and Crescent Point.

7. As to both Sections 8 and 9, BBC, EP Energy, QEP, Rio Capital, Crescent Point, and Deril Enloe Smith (as to Section 9 only) have executed, or agreed to execute, one or more operating agreements covering the respective Drilling Unit, pursuant to which BBC is named as Operator and pursuant to which said parties have collectively voluntarily pooled their interests. All of said joint operating agreements provide for a 100%/300% non-consent penalty, except the agreement with Crescent Point which instead provides for a 150%/400% non-consent penalty. This equates to 99.402606% of the Section 8 Drilling Unit of the working interest voluntarily pooled, and 98.857543% of the Section 9 Drilling Unit of the working interest voluntarily pooled.

8. Title to the remaining fee oil and gas interests in each section, according to the realty records of Duchesne County, is vested as follows:

<u>Owner</u>	<u>Section 8 Interest</u>	<u>Section 9 Interest</u>
Croff Oil Company ("Croff")	0.291667% (signed an AFE; no JOA)	0.291667% (signed an AFE; no JOA)
Falcon Royalties, LLC, as Executive Rights Owner	0.291667%	0.291667%
Douglas Rhodes, apparent heir of Sara I. Tanner and Zola T. Rhodes	0.001323%	0.001323%
Nancy Jane Rhodes, apparent heir of Sara I. Tanner and Zola T. Rhodes	0.001323%	0.001323%
David Michael Rhodes, apparent heir of Sara I. Tanner and Zola T. Rhodes	0.001323%	0.001323%
Daniel Rhodes, apparent heir of Sara I. Tanner and Zola T. Rhodes	0.001323%	0.001323%
Helen T. Beaton, apparent heir of Sara I. Tanner	0.005293%	0.005293%
Mark Smith, apparent heir of Henry A. Smith	0.000106%	0.000106%
Deril Enloe Smith, apparent heir of Henry A. Smith	0.000423%	N/A (signed an AFE and JOA; <i>see</i> Paragraph 7 above and Paragraph 9 below)
Barry M. Smith, apparent heir of Henry A. Smith	0.000423% (signed an AFE; no JOA)	0.000423% (signed an AFE; no JOA)

Rozel Smith Woolley, apparent heir of Henry A. Smith	0.000423%	0.000423%
Janiel Smith Hicks, apparent heir of Ernan H. Smith	0.000423%	0.000423%
Leland Smith, apparent heir of Ernan H. Smith	0.000053%	0.000053%
Wesley Smith, apparent heir of Ernan H. Smith	0.000053%	0.000053%
Thaniel Smith, apparent heir of Ernan H. Smith	0.000053%	0.000053%
Nathan Smith, apparent heir of Ernan H. Smith	0.000053%	0.000053%
Ethan Ben Smith, apparent heir of Ernan H. Smith	0.000053%	0.000053%
Carol Barney, apparent heir of Agnes S. Knapp	0.000529%	0.000529%
Francis (Frank) Lee Knapp, apparent heir of Agnes S. Knapp	0.000529%	0.000529%
Laura Macfarlane Twiss, apparent heir of Della S. Miller	0.000353%	0.000353%
Lisa Baum	-0-	0.138816%
Phillip Baum	-0-	0.138816%
Dorothy Warren, a/k/a Dorothy Shelton (deceased)	-0-	0.267855%

For purposes of the cause, these parties, all to be force pooled, are referred to collectively herein as the "FP Parties," whether consenting or non-consenting.

9. Beginning in early 2013, BBC and/or Gary Carlson, a contract landman on behalf of BBC, contacted each of the unleased parties and offered to each owner an opportunity to lease their interest to BBC, or an opportunity to participate in each of the subject wells. Croff and Barry M. Smith both signed AFE's and agreed to pay their proportionate costs for both the Section 8 and 9 wells, but did not sign JOA's. Deril Enloe Smith made the same election to participate and pay his respective full working interest costs and signed a JOA, but only as to the 5-9D-46 BTR Well. Despite good faith negotiations, mutually acceptable terms for lease or participation could not be reached with any of the remaining unleased owners.

10. In accordance with applications for permit to drill approved by the Division, BBC spud the 11-8D-46 BTR Well at a location 2,308 feet FSL and 1,817 feet FWL in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of subject Section 8 on January 1, 2014, and completed it as a producing oil well with first production achieved on May 1, 2014. In addition, BBC spud the 7-8-46 BTR Well at a location 1,958 feet FNL and 1,959 feet FEL in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of subject Section 8, on January 3, 2014 and completed it as a producing oil well with first production achieved on May 18, 2014. Both wells have produced and continue to produce from intervals within the Lower Green River-Wasatch formations as defined in

the Applicable Orders and outlined above. Both wells were deemed “economically feasible” to drill as that term is utilized in the Applicable Orders.

11. In accordance with its application for permit to drill approved by the Division, BBC spud the 5-9D-46 BTR Well at a location 1,684 feet FNL and 496 feet FWL in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of subject Section 9 on December 31, 2013, and completed it as a producing oil well with first production achieved on May 6, 2014. The 5-9D-46 BTR Well has produced and continues to produce from intervals within the Lower Green River-Wasatch formations as defined in the Applicable Orders and outlined above. The 5-9D-46 BTR Well is deemed “economically feasible” to drill as that term is utilized in the Applicable Orders.

12. The 11-8D-46 BTR and 5-9D-46 BTR Wells are the first wells drilled by BBC in each respective Section. Such wells inherently carry risks of successful completion and production. No adjacent wells provided enough information to have drawn any conclusions regarding the Lower Green River-Wasatch productivity in the area at the time the two wells were drilled. In addition, the complex nature of the Lower Green River-Wasatch formations presents inherent risks. In order to drill to total depth with the amount of shows, sufficient mud weight is necessary for control, but an improper weight could result in breaking down and losing returns in shallower zones, requiring a delicate balance with associated risks.

13. Given the findings outlined in Findings of Fact Nos. 7, 9 and 12 above, and based on the other testimony provided at the hearing, the risk assumed by BBC and the other participating working interest owners in the drilling of the 11-8D-46 BTR and 5-9D-46 BTR Wells justifies a 300% risk compensation award (non-consent penalty).

14. The terms and conditions of the JOA's, admitted into evidence at the hearing as BBC's Exhibits "3" and "4" (also designated as Exhibits "A" and "B" to the Request) and attached hereto and by this reference incorporated herein as Exhibits "A" and "B", are justified, fair and reasonable, and are appropriate to govern the relationship between BBC, as Operator, and the FP Parties, as Non-Operators, as to the Wells and the Drilling Units to the extent not inconsistent with this Order.

15. The average weighted fee landowner's royalty for the Section 8 Drilling Unit is 17.521228%.

16. The average weighted fee landowner's royalty for the Section 9 Drilling Unit is 17.437949%.

17. An interest rate charge of prime rate in effect at JP Morgan Chase Bank plus 1% is justified, fair and reasonable.

18. Estimated plugging and abandonment costs of \$75,000 per well based on 100% working interest ownership are justified, fair and reasonable.

19. As of the exhibit due date, the actual cost of drilling the 11-8D-46 BTR Well was \$2,816,974, the actual cost of drilling the 5-9D-46 BTR Well was \$2,856,142, and the actual cost of drilling the 7-8-46 BTR Well was \$2,789,278, each based on 100% working interest, as detailed on BBC's Exhibit "7". Said costs are deemed justified, fair and reasonable.

20. A copy of the Request was mailed via certified mail to all parties sought to be force pooled. As evidenced by the return receipts collectively submitted as Exhibit "10," as supplemented, 12 of 24 parties to be compulsory pooled, received the mailing. All but two of the remaining mailings were sent to valid addresses but those parties chose not to claim the mailing after a delivery notice had been provided by the USPS. The remaining two mailings were sent to the last known address of record.

21. Notice of the filing of the Request and of the hearing thereon was duly published in the Salt Lake Tribune and Deseret Morning News on November 16, 2014, and in the Uintah Basin Standard on November 18, 2014.

22. Pursuant to the Board's Order Granting *Ex Parte* Motion for Service By Publication dated October 22, 2014, a Notice of Opportunity to Lease or Participate in Oil and Gas Wells and of Filing of Request for Agency Action and Hearing Thereon, was published in the Uintah Basin Standard on October 28, and November 4 and 11, 2014 to any unknown and unlocatable parties.

23. The vote of the Board members present in the hearing and participating in this Cause was unanimous (7-0) in favor of granting the Request.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all parties whose legally protected interests are affected by the Request in the form and manner as required by law and the rules and regulations of the Board and Division.

2. The Board has jurisdiction over all matters covered by the Request and all interested parties therein, and has the power and authority to render the order herein set forth pursuant to Utah Code Ann. §40-6-6.5.

3. BBC has sustained its burden of proof, demonstrated good cause and satisfied all legal requirements for the granting of the Request.

4. Pursuant to the holding in *Cowling v. Board of Oil, Gas and Mining*, 830 P.2d 220, 226 (Utah 1991), the Applicable Orders established, upon their respective entry, the parties' correlative rights to production from any well located on the Drilling Units.

5. Due to their failure to timely respond to the Request and to appear at the hearing after proper notice, the FP Parties are declared in default pursuant to Utah Admin. Code Rules R641-104-150 and R641-108-400.

6. Falcon Royalties, LLC, as Executive Rights Owner, Mark Smith, Rozel Smith Woolley, Janiel Smith Hicks, Leland Smith, Wesley Smith, Thaniel Smith, Nathan Smith, Ethan Ben Smith, Deril Enloe Smith, Carol Barney, Francis Lee Knapp, a/k/a Frank Knapp, Laura Macfarlane Twiss, Douglas Rhodes, Daniel Rhodes, Nancy Jane Rhodes, David Michael Rhodes and Helen T. Beaton, as well as any parties claiming ownership by, through or under the Estates of Sara I. Tanner, Cloyd Goates, John R. Moritz, Frederick Blechmann, Clarice Blechmann, Hugh J. Hintze, Ernan H. Smith, Agnes S. Knapp, Henry A. Smith, Della S. Miller, Theodore Sam and Joseph Sam and not already leased or otherwise participating are deemed “non-consenting owners,” as that term is defined in Utah Code Ann. §40-6-2(11), as relating to the 11-8D-46-BTR and 7-8-46 BTR Wells, and are properly deemed to have refused to agree to bear their respective proportionate share of the costs of the drilling and operation of the said Wells as provided in Utah Admin. Code Rule R649-2-9(1).

7. Falcon Royalties, LLC, as Executive Rights Owner, Mark Smith, Rozel Smith Woolley, Janiel Smith Hicks, Leland Smith, Wesley Smith, Thaniel Smith, Nathan Smith, Ethan Ben Smith, Carol Barney, Francis Lee Knapp, a/k/a Frank Knapp, Laura Macfarlane Twiss, Douglas Rhodes, Daniel Rhodes, Nancy Jane Rhodes, David Michael Rhodes and Helen T. Beaton, as well as any parties claiming by, through or under the Estates of Grace S. Holroyd, Ruth S. Voorhies, Allen Dean Voorhies, Harold Shelton,

Sara I. Tanner, Dorothy Warren, a/k/a Dorothy Shelton, a/k/a Dorothy Davis, Cloyd Goates, John R. Moritz, Frederick Blechmann, Clarice Blechmann, Hugh J. Hintze, Ernan H. Smith, Agnes S. Knapp, Henry A. Smith, Della S. Miller, Theodore Sam and Joseph Sam and not already leased or otherwise participating are deemed “non-consenting owners,” as that term is defined in Utah Code Ann. §40-6-2(11), as relating to the 5-9D-46 BTR Well, and are properly deemed to have refused to agree to bear their respective proportionate share of the costs of the drilling and operation of the said Well as provided in Utah Admin. Code Rule R649-2-9(1).

8. Croff and Barry M. Smith are deemed “consenting owners,” as that term is defined in Utah Code Ann. §40-6-2(4), as relating to the 11-8D-46-BTR, 7-8-46 BTR and 5-9D-46 BTR Wells. However, said parties’ interests have not been voluntarily pooled for the Drilling Units.

9. The force pooling of the FP Parties’ interests, whether consenting or non-consenting, in the Section 8 Drilling Unit retroactive to May 1, 2014, being the date of first production for the 11-8D-46 BTR Well, under the terms and conditions set forth in this Order is just and reasonable, and ensures all parties will receive their fair and equitable share of production from the 11-8D-46 BTR and 7-8-46 BTR Wells.

10. The force pooling of the FP Parties’ interests, whether consenting or non-consenting, in the Section 9 Drilling Unit retroactive to May 6, 2014, being the date of

first production for the 5-9D-46 BTR Well, under the terms and conditions set forth in this Order is just and reasonable, and ensures all parties will receive their fair and equitable share of production from the 5-9D-46 BTR Well.

ORDER

Based upon the Request, testimony and evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request in this Cause is granted.
2. The interests of all parties subject to the jurisdiction of the Board, specifically including the consenting and non-consenting FP Parties, in the Section 8 Drilling Unit are pooled retroactively to May 1, 2014 (being the date of first production of the 11-8D-46 BTR Well).
3. The interests of all parties subject to the jurisdiction of the Board, specifically including the consenting and non-consenting FP Parties, in the Section 9 Drilling Unit are pooled retroactively to May 6, 2014 (being the date of first production of the 5-9D-46 BTR Well).
4. Operations on any portion of either the Section 8 or Section 9 Drilling Unit shall be deemed for all purposes to be the conduct of operations upon each separately owned tract in the respective Section 8 Drilling Unit or Section 9 Drilling Unit by the several owners.

5. Production allocated or applicable to a separately owned tract included in the Section 8 Drilling Unit or Section 9 Drilling Unit shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on each respective unit.

6. Each owner shall pay his allocated share of the costs incurred in drilling and operation of the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, including, but not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities, reasonable charges for administration and supervision of operations, and other costs customarily incurred in the industry, all to be governed in accordance with the terms and conditions of the joint operating agreements executed with BBC or, only in the case of the FP Parties, the respective applicable joint operating agreements attached hereto as Exhibits "A" and "B" and by this reference incorporated herein to the extent not otherwise inconsistent with this Order.

7. The Non-Consenting FP Parties are "non-consenting owners," and BBC as Operator of the Drilling Unit on behalf of Crescent Point, QEP, Rio Capital, EP Energy, and the Consenting FP Parties, is a "consenting owner" as these terms are utilized in Utah Code Ann. §40-6-6.5, with respect to the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46

BTR Wells. Such parties shall hereinafter be referred to by utilizing such terms with capitalization.

8. The interests of the Non-Consenting Owners shall be deemed relinquished to the Consenting Owner during the period of payout for the 11-8D-46 BTR, 7-8-46 and 5-9D-46 BTR Wells, as applicable, on a well-by-well basis as provided in Utah Code Ann. §40-6-6.5(8). The relinquishment does not constitute a defeasance of title to the interest in the mineral estate, but rather the relinquishment of the revenue stream attributable to the Non-Consenting Owners' allocated share during the period of payout on a well-by-well basis, after payment of the royalty provided herein.

9. Each Non-Consenting Owner shall be entitled to receive, subject to the royalty specified herein, the share of the production of the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells applicable to such owner's interest in the respective Drilling Unit after the Consenting Owner has recovered the following from such Non-Consenting Owner's share of production on a well-by-well basis: (1) 100% of the Non-Consenting Owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping; (2) 100% of the Non-Consenting Owner's share of the estimated costs of plugging and abandoning the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, respectively, which estimated costs are and shall be for each well \$75,000 (based on a 100% working interest); 100% of

the Non-Consenting Owner's share of the cost of operation of the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, respectively, commencing with first production and continuing until the Consenting Owner has recovered all costs; and (4) a risk compensation award of 300% of the Non-Consenting Owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing, and completing, and the cost of equipment in the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, respectively, to and including the wellhead connections, as such costs are delineated in Utah Code Ann. §40-6-6.5(4)(d). The Non-Consenting Owner's share of costs is that interest that would have been chargeable to the Non-Consenting Owner had such owner initially agreed to pay such owner's share of the costs of the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, respectively, from the commencement of operations. In addition, a reasonable interest rate of prime in effect at JP Morgan Chase plus 1% shall be imposed per Utah Code Ann. §40-6-6.5(4)(d)(iii).

10. Each Non-Consenting Owner in the Section 8 Drilling Unit shall receive a royalty equal to the average weighted fee landowner's royalty of 17.521228%. Each Non-Consenting Owner in the Section 9 Drilling Unit shall receive a royalty equal to the average weighted fee landowner's royalty of 17.437949%. When calculating the division of interest for each Non-Consenting Owner, the average fee landowner's royalty shall be

proportionately reduced in the ratio that the Non-Consenting Owner's interest bears to (1) the total interest in the tract and (2) then further reduced in the ratio that the tract acres bear to the total acreage in the Drilling Unit. The proportionately reduced royalty shall be paid to each Non-Consenting Owner until such time as such Non-Consenting Owner's share of costs, the 300% risk compensation award, and applicable interest charges have been fully recouped on a well-by-well basis, as provided in Utah Code Ann. §40-6-6.5 and in this Order.

11. The Consenting Owner shall furnish each Non-Consenting Owner with monthly statements specifying:

- a. costs incurred;
- b. the quantity of oil or gas produced; and
- c. the amount of oil and gas proceeds realized from the sale of production during the preceding month,

as relating to the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, respectively.

12. Upon the respective payout of the 11-8D-46 BTR, 7-8-46 BTR and 5-9D-46 BTR Wells, the Non-Consenting Owners' relinquished interests in said Wells shall automatically revert to them, and the Non-Consenting Owners shall from that time forward own the same interest in the Well and the production from it, and shall be liable for the further costs of operation, as if such owners had participated in the initial drilling and completion operations.

13. Payout occurs when the Consenting Owner has recouped from the Non-Consenting Owners the costs and expenses of drilling and completing the respective Well, together with the risk compensation award (non-consent penalty) and interest, as provided for in Order No. 9 above.

14. In any circumstance when any Non-Consenting Owner has relinquished such owner's share of production to the Consenting Owner or at any time fails to take such owner's share of production in-kind, when such owner is entitled to do so, such Non-Consenting Owner is entitled to an accounting of the oil and gas proceeds applicable to such owner's relinquished share of production; and payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of costs.

15. Pursuant to Utah Admin. Code Rules R641 and Utah Code Ann. §63G-4-204 to 208, the Board has considered and decided this matter as a formal adjudication.

16. This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. §63G-4-208 and Utah Administrative Code Rule R641-109.

17. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. §63G-4-208(e) - (g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order issued. Utah Code Ann. §§63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. §63G-4-302, entitled, “Agency Review - Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. §63G-4-302 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

18. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

19. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this _____ day of December, 2014.

**STATE OF UTAH
BOARD OF OIL, GAS AND MINING**

By: _____
Ruland J. Gill, Jr., Chairman

1000.34

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of December, 2014, I caused a true and correct copy of the foregoing Proposed Findings of Fact, Conclusions of Law and Order to be mailed, postage pre-paid, and sent electronically to the following:

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